

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

REGAL CINEMAS, INC. D/B/A CITYPARK 20 AT LINCOLNSHIRE, IL

Employer

and

MOTION PICTURE PROJECTIONISTS, OPERATORS & VIDEO TECHNICIANS, LOCAL 110, INTERNATIONAL  
ALLIANCE OF THEATRICAL STAGE EMPLOYEES, AFL-CIO

Petitioner

Case 13-RC-20074

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The labor organization involved claims to represent certain employees of the Employer.

**Facts**

The petitioned-for unit included all projectionists employed by the Employer at its Lincolnshire theater. On the petition, the Petitioner listed the number in this unit as six. However, after testimony given at the hearing on March 16, 1999, the Petitioner contended that there were four nonsupervisory people performing projectionist work and that they would constitute an appropriate unit.

The Employer contends that even *assuming arguendo* that, for a time, certain employees performed projectionist duties primarily, that any such occurrence was contrary to the Employer's policies and, when the failure to follow corporate policy was discovered, all of its manager/operators at the Lincolnshire theater began

---

<sup>1</sup> The arguments advanced by the parties at the hearing and in the brief filed by the Employer have been carefully considered.

<sup>2</sup> The Employer is a corporation engaged in the business of operating motion picture theaters in Lincolnshire, Illinois and nationwide.

performing or began training to perform all of the duties set forth in their position description. Accordingly, the Employers contends that they are supervisors within the meaning of Section 2(11) of the Act.

The Employer owns and operates a number of motion picture theaters in the United States, including a movie theater in Lincolnshire, Illinois. The chain of command for the Employer, according to the record, begins with the senior vice president of operations for the company, Michael Levesque. The senior vice president of operations oversees all of the theaters across the country that Regal Cinemas operates. Under the senior vice president of operations are a number of district managers who supervise particular areas of the country and the general managers of specific theaters. Gus Colis is the district manager for the district contains the Lincolnshire theater involved herein and Kelly Johnson is its general manager. The parties stipulated that Mr. Johnson is a Section 2(11) supervisor. A number of manager/operators, concession stand workers, ushers, and box office people work under Mr. Johnson's direction.

The Lincolnshire theater first opened on November 13, 1998. Kelly Johnson was transferred to the Lincolnshire theater before it opened to serve as its general manager. According to testimony, the Employer considers Mr. Johnson to be the most senior manager/operator at the facility, with Mike Sandy being the next most senior. The Lincolnshire theater has around twenty movie screens. One projection booth exists for all the screens. Typically, the Employer has two projectionists or manager/operators at a time in the projection booth. Roughly seventy employees work at the Regal Cinema facility in Lincolnshire, excluding the IMAX theater. The IMAX theater is physically located in the same structure as Regal Cinema but the general manager and manager/operators in the instant dispute have nothing to do with its operation.

The Lincolnshire theater has around 11 manager/operators. The Employer may employ a twelfth manager/operator, but this is not entirely clear from the record. The manager/operators include: Theodore Blumenthal, Ocean Druen, O'Brien Brute, Chris Ellgass, Alex Hertzog, Sean Jackson, Aaron Kropp, Keith Meyer, Michael Perry, Michael Sandy, and Karen Kiwaczyk. Of these individuals, only Sean Jackson, Michael Sandy, and Alex Hertzog are salaried; they are also referred to as assistant managers in the record. The Employer pays the rest of the manager/operators at the Lincolnshire facility on an hourly basis. The record is silent as to their rate of pay.

According to the Employer, it does not use employees dedicated to solely operating the projectors for its theaters. Rather, the Employer uses manager/operators in almost all of its theater operations nationwide, who, according to the Employer, perform a full complement of duties, including running the projectors for the theater. The Employer states that the position of manager/operator began as an efficiency move on the part of the movie theater industry. Projector technology became so simplified that there was no longer a need for dedicated projectionists. Instead, the duties of projectionist were included with other managerial duties. According to the Employer, manager/operators, not only operate projectors, they also assign work to, recommend hiring, transfers, suspensions and layoffs, raises and promotions, as well as discipline and discharge, employees. It asserts that manager/operators also supervise employees and oversee the theater facilities. The Regal Cinemas Theater Management Manual lists a manager's duties as "[t]he hiring, training, developing, supervising, scheduling, and after conferring with the Human Resources Director, terminating of any theatre employees." The Manual also lists running the projectors, administering paperwork, upholding company policies, supervising and performing all staff positions as required, controlling costs, supervising theater maintenance, monitoring risk management, marketing films, counting theater receipts, and customer relations as duties of a manager.

Typically, the weekends are the busiest times for the Lincolnshire theater. The theater has two shifts: the first shift begins at 10:00 am and lasts until around 6:00 pm; the second shift begins at 6:00 pm and lasts until 1:00 am the following morning. The Employer keeps the theater open around 102 hours per week. Monday through Friday, from 10:00 am to 6:00 pm, only 2-3 managers/operators work at the theater. Monday through Friday, from 6:00 pm to 1:00 am, the theater will usually have around 3-4 manager/operators. On a Friday or Saturday night, 4-5 manager/operators will work at the theater. Friday night, Saturday matinee, Saturday evening, and Sunday matinee are busiest with 5-6 manager/operators. During the summer time, on any shift, the theater also has around 5-6 manager/operators.

Soon after Mr. Johnson was put in charge of the Lincolnshire theater, he permitted several manager/operators to choose the work in the theater that they preferred. Apparently, several manager/operators decided to work most, if not all, of their time in the projection booth. Aaron Kropp, Chris Ellgass, Keith Meyer and Ted Blumenthal all decided to work almost exclusively as projectionists. With the exception of Aaron Kropp, the record shows that these manager/operators did not exercise the full range of functions expected of manager/operators, including the functions that the Employer contends are evidence of supervisory status.

According to the testimony at the hearing, and documents entered into evidence, it is contrary to the Employer's company policy for manager/operators to work exclusively in a particular area of the theater. Around two weeks before the representation hearing, Michael Levesque, the senior vice president of operations found out about Kelly Johnson's practice of allowing manager/operators to choose where they worked. Levesque called Gus Colis and Kelly Johnson and issued verbal warnings about their alleged violations of company policy. Johnson is currently retraining all the manager/operators to abide by the Employer's description of the duties of manager/operators, a process that may take up to six months.

The evidence on what duties are actually performed by the manager/operators is somewhat inconclusive. Although, it appears at this point that almost all of the reasonably clear examples in the record concerning the exercise of supervisory authority have been exercised by the manager/operators who are salaried, as opposed to those who are hourly paid. Thus, according to the testimony at the hearing, Kelly Johnson, Mike Sandy and a former Lincolnshire manager/operator named Lisa Hillman hired employees for the theater. Kelly Johnson stated during the hearing that Aaron Kropp recommended to Johnson that he hire Chris Ellgass and Keith Meyer. Kropp also allegedly distributes work assignments such as putting together films, trailers, cleaning the floor, etc. Mike Sandy may have issued warnings but it is not clear whether they were approved in advance by Johnson. Currently, Mike Sandy usually does the employee scheduling at the theater. Kelly Johnson works at the theater typically on Fridays, Saturdays and Sundays. He usually takes off on Mondays and Tuesdays. When Johnson works, Mike Sandy usually does not.

Kelly Johnson recently began enforcing a dress code in the projection booth. Up until that time, the projectionists wore slacks and a polo type shirt. Currently, these employees are expected to wear a collar shirt with no tie. Johnson expects people on the "floor" to wear a sport coat.

The parties at the hearing did not clarify the differences in benefits for salaried and hourly manager/operators; however, the record discloses that the Employer does not pay salaried managers time and a half for overtime, but it does so for the hourly manager/operators. All theater employees get free food (popcorn) when they are on break time. The theater has no special break room for employees. The only office in the theater is Kelly Johnson's and only he uses it. The Petitioner entered into evidence the Employer's Staff Operations Manual. The Manual indicates that the Employer offers a benefit package to all its employees, as long as the employees meet specific eligibility requirements. The requirements involve: (1) pay status, whether

it be full or part-time, salary or hourly; (2) time of service with Regal Cinemas; and (3) 401 (K) plan requirements. The Manual indicates that further inquiries regarding eligibility should be directed towards the Benefits Coordinator in the Human Resources Department. The hearing testimony did not shed any light on any differences in benefits.

## Analysis

Based upon the record, it cannot be determined whether some or all of the manager/operators are Section 2(11) supervisors. Therefore, I have examined whether the petitioned-for unit constitutes an appropriate unit. Under Section 9(b) of the Act, the Board has the power to “decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . . .” “The selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, if not final, is rarely to be disturbed.” *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976). The National Labor Relations Act allows a union to petition for an appropriate unit. *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826 (1992). However, this does not necessarily mean that the unit will be the most appropriate or that there might not be others more appropriate. *Phoenix*, *supra* at 827.

The key question regarding unit appropriateness is whether the employees share a sufficient community of interest. *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In *Alois Box Co., Inc.*, 326 NLRB No. 110 (1998)(citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962)), the Board enumerated the factors to be considered in determining whether individuals have a community of interest with other employees; included were: method of wages or compensation, hours of work, employment benefits, supervision, qualifications, training and skills, job functions, amount of contact with other employees, integration of work functions, and bargaining history. *See also, Keeler Brass Co.*, 301 NLRB 769 (1991). In practice, the Board has found units to be inappropriate when the employees in the petitioned for unit do not have a separate community of interest from other similarly-situated employees.

In *Brand Precision Services*, *supra*, the Board held that a unit of operators, apart from other production employees, was inappropriate for purposes of collective bargaining. In that case, the employer operated an industrial cleaning business. The union had petitioned for a unit limited to only the employer’s operating employees. However, in finding that the operators did not possess a separate community of interest from other employees, the Board noted the high integration of the employer’s work, the constant contact among employees, and the employee’s common supervision. *Id.* at 659. The Board also emphasized how the operators’ training, skills, and functions were not distinct from those of laborers or leadmen. The job descriptions for these three jobs included very similar duties and requirements. The employer also required the operators to go through the same basic 12 hour hydroblasting training as other employees. Operators were paid on a similar scale as laborers and leadmen, and portions of their jobs overlapped. Accordingly, the Board found that a unit consisting of only operators to be inappropriate. Similar results obtained in *Transerv Systems, Inc.*, 311 NLRB 766 (1993) (where the Board found the employees at issue to have the same functions, high job integration, frequent contact with each other, common supervision, and similar terms and conditions of employment) and *Phoenix Resort Corp.*, *supra*, (where the Board found such a high degree of overlap in job functions that golf course department employees must be included with landscaping employees to create an appropriate unit.) Based on these considerations, I am unable to find that the petitioned-for “projectionist” employees have a separate community of interest from the Employer’s other manager/operators.

As mentioned previously, the Employer does not pay all its manager/operators on an hourly basis. The Employer pays some manager/operators, such as Sean Jackson and Alex Hertzeg, on a salaried basis. While this difference may be significant, there are also many similarities among the manager/operators. Thus, the manager/operators have similar hours, benefits and working conditions. Overall, the Employer appears to determine manager/operator hours by the amount of business at the theater, with weekdays being the least busy, and weekends and summers having the most business. All manager/operators are scheduled according to the needs of the theater. They have common supervision. Thus, the only person the manager/operators appeared to report to on a regular basis is Kelly Johnson. Additionally, even though the managerial functions maybe split up to a degree among the manager/operators, it is undisputed that Mr. Johnson supervises the entire theater.

Significant factors that demonstrate a community of interest among all of the manager/operators, including the “projectionists”, include the integration of job functions. Further, it is clear from the record that the Employer intended manager/operators to be interchangeable; that is, one could be substituted for another, if any given manager/operator was not available for a shift. The evidence was inconclusive with regard to employee qualifications, training, and amount of contact and interchange with other employees. There is no bargaining history at the Lincolnshire theater. Other than overtime pay, it is unclear what differences exist, if any, in benefits between salaried and hourly manager/operators. However, from the evidence presented, I am persuaded that a unit of four “projectionist” employees cannot be carved out from a potential employee complement of 11 manager/operators, without regard to the alleged supervisory status of some manager/operators. Thus, the “projectionists” clearly have a community of interest with the rest of the manager/operators at the Lincolnshire theater. Inasmuch as the Petitioner has stated on the record that it is only interested in representing the group of four “projectionists”, I shall dismiss the petition.

### **ORDER**

IT IS HEREBY ORDERED that the petition filed be, and it is, dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board’s Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board and addressed to the Executive Secretary, Franklin Court Building, 1099-14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 15, 1999.

DATED at Chicago, Illinois this 1st day of April, 1999.

/s/ Elizabeth Kinney  
Elizabeth Kinney, Regional Director  
National Labor Relations Board, Region 13  
200 West Adams Street, Suite 800  
Chicago, Illinois 60606

Regal Cinemas, Inc. d/b/a Citypark 20 at Linconshire, IL  
13-RC-20074

Classification numbers: 420-0100, 2900-2996, 4600-4633, 5000-5095